IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36127

STATE OF IDAHO,	)	**2010 Unpublished Opinion No. 426**
	)	
Plaintiff-Respondent,	)	**Filed: April 13, 2010**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
MICHAEL BRIGHT,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Charles W. Hosack, District Judge.

Order of the district court denying motion to suppress, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rosemary Emory, Deputy Attorney General, Boise, for respondent.

GRATTON, Judge

Michael Bright appeals from his judgment of conviction, specifically challenging the district court's order denying his motion to suppress. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Bright was convicted, upon jury verdict, of rape. Idaho Code § 18-6101. The district court imposed a sentence of ten years, with two and one-half years determinate, and retained jurisdiction. Following the period of retained jurisdiction, the court suspended the sentence and placed Bright on probation. Prior to trial, Bright filed a motion to suppress statements made to a police officer over the telephone and during a subsequent interview at the police station. The district court denied the motion to suppress after an evidentiary hearing. Bright appeals.

II.

ANALYSIS

Bright contends that the district court erred in denying his motion to suppress because his statements to the police officer were not voluntary. The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

As noted, two separate interviews were challenged by Bright. The first interview was conducted over the telephone. Bright does not assert that he was in custody relative to that interview such that *Miranda*[1] warnings were required. Regarding the second interview at the police station, Bright acknowledges that he was given *Miranda* warnings. However, as to both interviews, Bright claims that his admissions were the result of an implied promise not to arrest him if he confessed and a threat to arrest him if he remained silent and, since his admissions were made in reliance on the implied promise, they were involuntary.

In *State v. Cordova*, 137 Idaho 635, 638, 51 P.3d 449, 452 (Ct. App. 2002), we stated:

> The United States Supreme Court has recognized that a noncustodial interrogation might in some situations, by virtue of some special circumstance, be characterized as one where a defendant's confession was not given voluntarily. *See Beckwith v. United States*, 425 U.S. 341, 347-48, 96 S.Ct. 1612, 1616-17, 48 L.Ed.2d 1, 8-9 (1976); *see also State v. Troy*, 124 Idaho 211, 214, 858 P.2d 750, 753 (Ct. App. 1993) [sic]. In order to find a violation of a defendant's due process rights by virtue of an involuntary confession, coercive police conduct is necessary. *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S.Ct. 515, 522, 93 L.Ed.2d 473, 484 (1986); *State v. Whiteley*, 124 Idaho 261, 268, 858 P.2d 800, 807 (Ct. App. 1993). The state must show by a preponderance of the evidence that the defendant's statements were voluntary. *Whiteley*, 124 Idaho at 268, 858 P.2d at 807.
>
> The proper inquiry is to look to the totality of the circumstances and then ask whether the defendant's will was overborne by the police conduct. *Arizona v.*

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[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

> *Fulminante*, 499 U.S. 279, 287, 111 S.Ct. 1246, 1252, 113 L.Ed.2d 302, 316 (1991); *Troy*, 124 Idaho at 214, 858 P.2d at 753. In determining the voluntariness of a confession, a court must look to the characteristics of the accused and the details of the interrogation, including: (1) whether *Miranda* warnings were given; (2) the youth of the accused; (3) the accused's level of education or low intelligence; (4) the length of the detention; (5) the repeated and prolonged nature of the questioning; and (6) deprivation of food or sleep. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226, 93 S.Ct. 2041, 2047, 36 L.Ed.2d 854, 862 (1973); *Troy*, 124 Idaho at 214, 858 P.2d at 753.

Id.

During the telephone conversation, Bright indicated he understood that the police wanted to talk to him about his stepdaughter and initially stated only that she had been a problem and he wanted her to go back to live with her father. The officer balked at this and stated:

> I have only had this, basically, a day and a half. And just in that short amount of time I have been able to find out quite a bit of stuff. The time frame that she's talking about with this, as long as you are honest with me, I don't need to make a physical arrest. I don't need to arrest you. But if you are not going to be truthful with me and tell me the truth about what happened, honestly, I've got enough that I can go down before a Judge and get a warrant and have you arrested.

The officer added that if Bright was going to "keep playing these games" that he would get a warrant and that he had enough to arrest him. Bright denied having sex with the girl and indicated that he would take a lie detector test. The officer stated that he was trying to work with Bright, and that if he was looking to arrest him he would have already had someone there to pick him up. At that point, the following exchange occurred:

> THE OFFICER: I'm willing to listen to your side of the story over the phone.
>
> THE DEFENDANT: Okay. My side of the story is I didn't rape her. She --
>
> THE OFFICER: Okay. So tell me what happened between the two of you that she would say that.
>
> THE DEFENDANT: I didn't rape her. That is the honest God's truth.
>
> THE OFFICER: Okay. Well, then let's put it in a more mild form. You did have sexual intercourse with her.
>
> THE DEFENDANT: Yes, I did.
>
> THE OFFICER: Okay. So, tell me how that happened.
>
> THE DEFENDANT: That was her -- she was the one that started it. I did not rape her.

Thereafter, the officer stated that he wanted Bright to go to the police station to write out a statement and that he did not feel Bright was being one hundred percent truthful and was playing

word games by stating that he did have sex with her, but did not rape her. Arrangements were made to meet at the police station, with the officer stating "mark my every living word, you are going to jail if you are not here."

At the start of the interview at the police station, the officer stated:

> Okay, Mike, before we get started, obviously, since this is a pretty serious incident, what I am going to do is read you your rights. It does not mean that you are going to be arrested. It is not like TV, just because we give you your rights you are going to be arrested. The main thing that you need to keep in mind, you need to be very honest with me. Don't play games with me like you started to on the phone and saying well, I didn't rape her, I --

Bright then attempted to deny raping the girl. Bright was advised of his rights and indicated that he wanted to give his side of the story. Bright was asked to tell the officer what happened and he denied raping the girl. He stated that the girl had come out of the shower in a towel and asked him for sex. He then repeatedly denied having sex with her. The officer stated: "Mike, you already told me that you did. All I am here to try to find out is why. Okay. I can prove you did." The officer accused Bright of lying and Bright again denied having sex with the girl. The officer stated:

> Michael, I've had it with you. I can prove you did have sex with her. I am here to get your side of the story. You don't want to do that, you will go to jail. You've already told me you had sex with her. All I want to know is why. I've got her statements. I have got a polygraph from her showing that she is being truthful.

After the officer indicated that he was asking about whether Bright had sex with the girl, not necessarily rape, Bright admitted to having sex with the girl, but only for a "quick second," a "real short period."

The district court noted that the parties agreed that the officer had probable cause to arrest Bright at the time of the interviews. The court noted that in *State v. Garcia*, 143 Idaho 774, 780, 152 P.3d 645, 651 (Ct. App. 2007), this Court held that informing a suspect of the officer's intent to do something that is within the officer's authority, i.e., arrest the suspect for whom probable cause exists, does not render a defendant's consent involuntary. The district court held:

> With regard to the telephone communication, the Court holds that the circumstances of the telephone communication involving the threat did not amount to prohibited coercion. No circumstance is relied upon as being coercive so as to render consent involuntary other than the threat of arrest. Under *Garcia*,

> the threat alone is not coercive. The statements made during the telephone conversation are admissible.
>
> The circumstances at the police station at least arguably raise the issue of voluntary statements. Although Miranda warnings had been given, the issue of a voluntary confession can still be raised by the defendant. The defendant is a mature adult of average intelligence. The nature of any detention was limited to the interview occurring in a room at the police station. The interview at the police station was short. While the questioning was aggressive, it was not unnecessarily repeated or prolonged. There is no issue of deprivation of food or sleep. The Court finds that the police conduct was not so coercive as to overbear the defendant's will.

Bright does not contest the factual findings of the district court, only the conclusion that, under the circumstances, the statements were voluntary. Bright argues that the statements of the officer amounted to an implied promise not to arrest him if he confessed and a threat to arrest him if he remained silent, which he contends rendered his statements involuntary. Bright attempts to distinguish *Garcia* and liken this case to *State v. Kysar*, 114 Idaho 457, 757 P.2d 720 (Ct. App. 1988).

In *Garcia*, we stated that an officer's implied or explicit offer not to arrest a suspect if he "turns over what he has" is not coercive if it merely informs the suspect of the officer's intention to do something that is within the officer's authority based upon the circumstances. *Garcia*, 143 Idaho 774, 779-780, 152 P.3d 645, 650-651. When an officer has probable cause to arrest, threatening only to do that which the law permitted him to do is not constitutionally objectionable coercion. *Id*. In *Garcia*, the district court characterized the officer's statement as "Turn over what you have, and we'll cite you" and "If you do not turn over what you have and if, in fact, you have drugs on you, then you're going to be subject to arrest." *Id*. at 780, 152 P.3d at 651. Since the officer had probable cause to arrest Garcia, this Court held that "the statement was an informational communication regarding authority the officers actually possessed and did not *ipso facto* render Garcia's consent involuntary." The Court further noted that a threat of arrest is only one factor among many to be considered in determining whether the surrounding circumstances amount to the type of coercion prohibited. *Id*.

In *Kysar*, in a discussion preliminary to incriminating statements, the detective represented that it was "a pretty safe bet" that Kysar would be out of custody in time to see his child born and that the detective would inform the prosecutor of Kysar's cooperation which would "make a big difference I'm sure" at sentencing. *Kysar*, 114 Idaho 457, 458, 757 P.2d 720,

721 (1988). The Court held that the representation of intent to inform the prosecutor of a defendant's cooperation was not an impermissible implied promise of leniency. *Id*. at 459, 757 P.2d at 722. As to the statement regarding the probability that Kysar would be out of custody in time to see his child born, the Court held that it was an implied promise that the detective did not have authority to fulfill and Kysar was not informed of that fact. The Court concluded that the detective's representations were sufficient to undermine Kysar's free will. *Id*.

The circumstances and holding in *Garcia* apply to this case. In *Kysar*, the detective did not have authority to fulfill the implied promise. Here, as in *Garcia*, the officer had probable cause and, thus, the authority to do that which he threatened, arrest Bright. Consequently, the officer's threat did not *ipso facto* render Bright's statements involuntary. However, as noted, a threat of arrest is only one factor to be considered in determining whether the surrounding circumstances are sufficient to undermine free will. In this case, the district court determined that, other than the threat of arrest, there were no other circumstances of coercion as to the telephone interview. The record supports this finding. Thus, the district court correctly determined that Bright's statements in the telephone interview were voluntary. The district court analyzed each of the six *Schneckloth* factors to assess Bright's characteristics and the details of the interview in determining the voluntariness of Bright's statements at the police station. Bright does not challenge the district court's factual findings regarding the circumstances surrounding the interview at the police station and, therefore, they will not be disturbed on appeal. While the interview at the police station was inherently more coercive than the telephone interview, we agree with the district court that, applying the *Schneckloth* factors, and based upon the totality of the circumstances, Bright's statements at the police station were not involuntary.

III.

CONCLUSION

Bright's statements to the officer during the telephone interview and the interview conducted at the police station were voluntary based upon the totality of the circumstances. Therefore, the district court's order denying Bright's motion to suppress and the judgment of conviction and sentence imposed by the district court are affirmed.

Judge GUTIERREZ and Judge MELANSON, **CONCUR.**